

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
7

8 TIFFANY BRINKLEY, on behalf
9 of herself and others similarly
10 situated,

11 Plaintiff,

12 v.

13 MONTEREY FINANCIAL
14 SERVICES, LLC,

15 Defendant.

Case No.: 16-cv-1103-WQH-WVG

ORDER

16 HAYES, Judge:

17 The matter before the Court is the Motion for Leave to Amend and to File a Second
18 Amended Class Action Complaint. (ECF No. 111).

19 **I. Background**

20 On October 15, 2013, Plaintiff Tiffany Brinkley initiated this action by filing a
21 Complaint (ECF No. 1-3) against Monterey Financial Services, Inc. and Doe Defendants
22 in the Superior Court of the State of California in and for the County of San Diego. On
23 April 1, 2016, Brinkley amended the Complaint to add Monterey Financial Services, LLC
24 as a defendant. (ECF No. 1-8 at 2). On May 17, 2018 Plaintiff filed a First Amended Class
25 Action Complaint. (ECF No. 97). On May 31, 2018 Defendant filed a Motion to Dismiss
26 Plaintiff's First Amended Complaint. (ECF No. 100). On June 30, 2018, Monterey
27 Financial Services, Inc. was terminated from the case. (ECF No. 104). On September 13,
28 2018, the Court granted in part and denied in part Defendant's Motion to Dismiss Plaintiff's
First Amended Complaint. (ECF No. 106).

1 On October 22, 2018 Plaintiff filed a Motion for Leave to Amend and to File a
2 Second Amended Class Action Complaint. (ECF No. 111). On November 2, 2018
3 Defendant filed a Notice of Non-Opposition to Plaintiff's Motion for Leave to Amend and
4 to File a Second Amended Class Action Complaint. (ECF No. 113).

5 **II. Legal Standard**

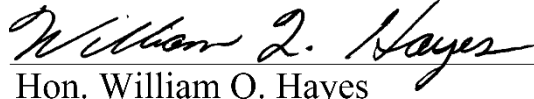
6 Federal Rule of Civil Procedure 15 mandates that leave to amend "be freely given
7 when justice so requires." Fed. R. Civ. P. 15(a). "This policy is to be applied with extreme
8 liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)
9 (per curiam) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th
10 Cir. 2001)). The Supreme Court has identified several factors district courts should
11 consider when deciding whether to grant leave to amend: "undue delay, bad faith or
12 dilatory motive on the part of the movant, repeated failure to cure deficiencies by
13 amendments previously allowed, undue prejudice to the opposing party by virtue of
14 allowance of the amendment, [and] futility of amendment." *Foman v. Davis*, 371 U.S. 178,
15 182 (1962); *see also Smith v. Pac. Props. Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004).
16 "Not all of the [*Foman*] factors merit equal weight. As this circuit and others have held, it
17 is the consideration of prejudice to the opposing party that carries the greatest weight."
18 *Eminence Capital*, 316 F.3d at 1052. "The party opposing amendment bears the burden of
19 showing prejudice." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).
20 "Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists
21 a *presumption* under Rule 15(a) in favor of granting leave to amend." *Eminence Capital*,
22 316 F.3d at 1052.

23 **III. Decision of the Court**

24 Defendant Monterey Financial Services, LLC "does not oppose the Motion." (ECF
25 No. 113 at 2). The Court finds that there has been no showing that any of the remaining
26 *Foman* factors warrants deviating from the "presumption under Rule 15(a) in favor of
27 granting leave to amend." *Eminence Capital*, 316 F.3d at 1052.

1 Plaintiff's Motion for Leave to Amend and to File a Second Amended Class Action
2 Complaint (ECF No. 111) is GRANTED. Plaintiff may file the proposed Second Amended
3 Class Action Complaint (ECF No. 111-1) on or before December 10, 2018.

4 Dated: November 27, 2018


5 Hon. William Q. Hayes
6 United States District Court
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28